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Sub. 11/19/98

STATE OF MICHIGAN

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration
Under Act 312 (Public Acts of 1969):

COUNTY OF NEWAYGO and NEWAYGO
COUNTY SHERIFF,

Employer,

-and-

MERC Case No. L96 H-6028

POLICE OFFICERS LABOR COUNCIL,

Union

OPINION AND AWARD

Chairman of the Arbitration Panel:

Kenneth P. Frankland

County Delegate:

John McGlinchey

Union Delegate:

Fred LaMaire

Representing County:

John McGlinchey

Representing Union:

John Lyons

Pre-Hearing Conference

July 1, 1997

Opinion on Comparability

September 12, 1997 (Attached)

Hearings Held

October 6, 1997, in White Cloud

Post-Hearing Briefs Received:

December 14, 1997

Opinion and Award Issued:

January 19, 1998

STATEMENT OF THE CASE

The Police Officers Labor Council filed a petition for arbitration pursuant to Act 312 of Public Acts of 1969 on December 16, 1996. Newaygo County also filed a petition for arbitration dated April 28, 1997. On May 14, 1997, MERC appointed Kenneth P. Frankland as the impartial arbitrator and chairperson of the panel in this matter. The pre-hearing conference was held on July 1, 1997, and a report was generated by the chair on July 3, 1997. In the absence of mutually agreeable comparable communities, the parties agreed to submit the issue of comparables to the panel by briefs, and briefs were received by the panel on August 29, 1997. The panel issued its Opinion on Comparability on September 12, 1997. Hearing was held in White Cloud on October 6, 1997. The last offers were exchanged, and the panel received the briefs of the parties in support of their offers on or before December 14, 1997.

The parties stipulated at the hearing, offered proofs and offered positions on the following issues:

A. Employer Issues:

1. Article 17, Health Insurance (Drug Rider)
2. Article 17, Wellness Program
3. Article 25, Section 15, Physical Agility

B. Union Issues:

1. Article 16, Pension
2. Article 17, Health Insurance (Retirees)
3. Article 23, Section 14, Shift Premium
4. Health Insurance Reimbursement

C. Joint Issue:

Wages

The parties stipulated that all issues were economic.

As provided in Act 312, the panel is comprised of a delegate chosen by each party and an impartial chair appointed by MERC. The chair of the panel is Kenneth P. Frankland, John R. McGlinchey is the county delegate, and Fred LaMaire is the POLC delegate. As required by the Act, the panel is required to adopt the final offer of settlement of one of the parties for each economic issue. The panel must utilize Section 9(a) standards and then select the offer that more closely complies with the criteria in Section 9(a). The panel has already used that analysis relative to the opinion on comparability, and that opinion is incorporated by reference to this opinion and award.

The parties stipulated to the jurisdiction of the panel, and all statutory time limits were waived. The duration of the new agreement was not a disputed issue, and the parties have proposed three year wage offers and the duration of the contract is three years, notwithstanding the Union's earlier proposals for a two year contract.

The parties also agreed that the panel could consider the wage proposals as a separate offer in each year rather than one offer for a three year package.

STANDARDS OF THE PANEL

Act 312 of 1969, MCL 423.231, specifically §9, contains eight factors upon which the panel is to base its opinion and award. Those are:

- a. lawful authority of the employer;
- b. stipulation of the parties;

c. interests and welfare of the public and financial ability of the unit of government to meet those costs;

d. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other communities generally:

(i) in public employment and comparable communities;

(ii) in private employment and comparable communities;

e. the average consumer prices for goods and services commonly known as the cost of living;

f. the overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

g. changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

h. such other factors, not confined to the foregoing which are normally or traditionally taken into consideration in a determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public or in private employment.

In the ensuing discussion, the panel will discuss the Section 9 factors on each issue.

DISCUSSION OF ISSUES

1. WAGE ISSUE

Union's Last Best Offer:

1. Effective January 1, 1997, 4 percent increase;
2. Effective January 1, 1998, 4 percent increase;
3. Effective January 1, 1999, 4 percent increase;

County's Last Best Offer:

Three percent wage increase for all bargaining unit members for each year. The wage increase for 1997, the first year of the agreement, would be made retroactive.

Discussion

Wages is typically one of the more significant issues when parties go to arbitration. When this issue was presented to the panel, the union presented its case based upon its then position of a 7 percent wage increase and a two-year proposal. Its last offer is now 4 percent for each of three years. The county has maintained three percent for each of the three years of the contract. The union's exhibits are contained in Section G of its exhibit book, and the county's in Section 1 of its exhibit book.

As the panel has previously indicated, it will use the comparability criteria set out in Section 9(d). As the county has suggested, Section 9(f) of the Act allows the panel to consider not only the actual direct wage paid, but also total compensation. The union's presentation is based exclusively upon wages paid and not total compensation. However, the panel, when reviewing the data submitted, believes either by looking at direct wage compensation or total compensation, that the proposal of the county is more consistent with the relevant criteria of the

Act.

Apparently there are 21 members of the bargaining unit, 15 deputies, 3 sergeants, 2 detective sergeants and 1 lieutenant. There is some disagreement in the record as to how the detective sergeants are paid, but it is not significantly germane to the issue here. Both sides have said that they want either 3 or 4 percent applied to each classification, so the panel will not be making specific delineations between classes, but rather will look at all employees for each of the 3 years.

The starting point of course is what are the wages currently earned. Using maximum wage rather than minimum, since the parties have used maximums primarily in their arguments, Newaygo deputies rank second amongst the comparable communities at \$31,907, behind only Clinton's \$35,151. The top paid sergeant ranks third at \$33,405, behind only Clinton at \$37,681 and Montcalm at \$33,486. In the lieutenant category, they are paid \$34,029, which places them either second or third, depending on whether non-union comparables are included. The exhibits demonstrate that by accepting Newaygo's 3 percent increase, the deputies would exceed the average of the comparables in all three years, and the same is true of the sergeants. The lieutenant classification at 3 percent is slightly lower than the average of the comparables. The county's 3 percent wage increase for deputies at the top exceeds the comparable communities' average by more than \$1,500. For 1998, the proposed 3 percent wage increase exceeds the comparables' average by \$1,200.

It is readily apparent that in the first year in particular, when all comparables have a contract, the county's proposal keeps Newaygo in its same position, behind only Clinton County with respect to deputies, the largest group in this unit. For 1998, it would again maintain

second position behind Clinton, but would continue to stay ahead of Mecosta and Wexford, who also receive wage increases in those years. They would also stay ahead of Barry County, who receives a wage increase for that year also.

The union's basic argument is that we are doing okay as compared to the others, but in order to ensure comparability and competitiveness when other contracts expire (with raises), it is necessary to accept the union's proposal. The union can offer no statistical information to support the proposition, since it is an equitable argument. However, the above analysis demonstrates that even at 3 percent as opposed to 4 percent, the bargaining unit members do not lose ground in 1997 or 1998, at least in terms of base wages.

With respect to 1999, Mecosta is the only comparable that apparently has a contract for that year. Newaygo's deputy at \$34,866 would still be significantly greater than Mecosta's \$32,895.

Although it is tempting to accept the union's argument that they should get a bigger increase in 1999 because there will be other contracts that have expired and wages may be greater in those units in 1998, 1999 and possibly 2000, the panel should only be guided by what they have before them, rather than speculation. Through 1999, members of the bargaining unit will receive wages second only to Clinton and significantly above the average. When this contract expires, and if the other comparable communities have made significant gains, then the appropriate time to address Newaygo's competitiveness with comparable communities would be in negotiating that contract.

It is not necessary for the panel to discuss the lieutenant issue because there is only one member and both parties have opted to not ask for different percentages per class but for all

employees per year. The union may be correct that the current lieutenant's salary at \$34,029 is third in ranking and is not competitive, particularly if Montcalm's increases during current negotiation, and Wexford and Clare contracts that would expire in 1998 may provide an increase. Having not differentiated by class, this panel will not use the possible disparity of the lieutenant classification as a basis to accept the union's position, given the fact that all of the other bargaining unit members, including the largest numerical group of deputies, will remain not only competitive, but as this panel views it, better than the comparable deputies.

This analysis and conclusion is without looking at total compensation as reflected in Employer's Exhibits 1H-0. In gross compensation, Newaygo is still second only behind Clinton, and significantly ahead of all of the others by approximately \$2,000. This is using salary, shift differential, holiday pay, and longevity. Although the employer clearly has costs for other programs such as disability, life insurance, health insurance, dental and optical insurance, it is extraordinarily difficult to compare what Newaygo employer costs are for these programs versus the other comparables, given the wide range of options that are available. But just looking at gross compensation and actual dollars received, the argument is compelling that the employer's proposal more closely follows the criteria of 9(f) based upon the record developed.

Dated: 1-19-98

John McGlinchey
John McGlinchey
Delegate for the County
☒ Concur
☐ Dissent

Dated: 1/26/98

Fred LaMaire
Fred LaMaire
Delegate for the Union
☐ Concur
☒ Dissent

Dated: 1/19/98

Kenneth P. Frankland
Kenneth P. Frankland, Chairperson

2. HEALTH INSURANCE - Article 17, Section 1 (Drug Rider)

The employer's proposal is as follows:

Effective January 1, 1997, the employer shall provide the Preferred Provider Drug Program. Effective January 1, 1997, the generic drug co-pay shall be \$2 and name brand drug co-pay shall be \$7.

The Union's offer is status quo.

Discussion

At the current time, the contract contains a \$5 co-pay for name brand drugs and no co-pay for generic drugs. The employer is requesting a \$2 increase, from \$5 to \$7 for name brand drugs, and from \$0 to \$2 for generic drugs. The employer has the burden on this issue. Their rationale is that they wish to shift a modest portion of their total health care costs to the employees. They argue that the internal comparables have a \$7 and \$2 co-pay, and this unit should have the same. They also argue that they have the second highest health insurance premium costs for a full family coverage of the external comparables. Mr. Humphreys testified that the total cost for the county has gone up in six years from \$69,000 to \$169,000 for drugs. The union argues that as public safety officers, they should be compared with other public safety officers and not internal comparables. They further suggest that the external comparables in employer exhibit 2A show that the average name brand drug is \$5.44 and generics are \$4.38, and that the current language of the contract is within the average and the median cost.

Not much of a record was developed on this issue. It appears that the only basis for a cost shift is that the employer states they are paying more in health care premiums than the other comparables. Even if that is empirically correct, it is not a sufficient rationale to make an

adjustment in the drug co-pay, because there are many components of the total health care premium cost. The existing name brand co-pay in Newaygo is the same as Wexford, Mecosta, Clinton and Barry, only Clare has a larger co-pay at \$10. Gratiot at \$3, Mason at \$2, Montcalm at \$4 have less than Newaygo. Given the fact that the testimony regarding increase in drug cost countywide is attributable to all employees, some 172 in number, and no record evidence as to what drug usage there may be in this unit of 21 employees, there seems to be little demonstrative evidence to support the increase to \$7. There is nothing in this record to demonstrate drug usage within the unit, how much money the county would actually save, and whether it is appropriate to shift this cost, even nominal to the employees, other than in collective bargaining. Apparently the internal comparables have collectively bargained, but we have no information as to the rationale therefor. Although it is preferable to have commonality amongst internal comparables, we don't know how many members are in those internal comparables and what impact it might have on this proposal.

With respect to the generic drugs, only three other counties differentiate with respect to generics, utilizing the common co-pay for all prescriptions. Since these are not two separate proposals but one, we must accept one proposal without differentiating between generic and name brand proposals. Although there might be some argument relative to a generic co-pay, based upon the fact that it appears that only Clinton has no cost for a generic and all other external comparables have some cost, on balance, looking at the proposal as a whole, there appears to be insufficient information to support the change in the contract. Accordingly, the

panel believes that the union's position of status quo should be awarded.

Dated: 1-19-98

John McGlinchey
John McGlinchey
Delegate for the County

☐ Concur

☒ Dissent

Dated: 1/26/98

Fred LaMaire
Fred LaMaire
Delegate for the Union

☒ Concur

☐ Dissent

Dated: 1/19/98

Kenneth P. Frankland
Kenneth P. Frankland, Chairperson

3. WELLNESS PROGRAM

The employer proposes to add new language to Article 16, Section 6, "If employees join White Cloud Wellness Center, they will be required to pay \$3 per pay period, however, if they use the facility 72 times in a 12 month period, the employer will refund money paid by the employee."

The union proposes maintaining the status quo.

Discussion

The current contract has a provision that employees may participate in a wellness program paid for by the county during non-working hours. If not, there is also an attendance health assessment and other requirements. The employer proposes the new language solely to encourage healthy employees. According to the testimony, if an employee didn't want to participate, they would simply not sign up for the White Cloud Wellness Center and would not be charged \$3 per pay period. However, if a person did sign up, they would be charged \$3 a pay period, if they did not use the facility at least six times per month, for a total of 72 times in a 12 month period, they would not receive a rebate. If they did use the facility more than 72 times, the employer would rebate \$36 to the employee.

There is no provision in any of the external comparables and the internal comparables have apparently added this language to their contracts. The union suggests that they should not be required to do anything they don't want to do, and that as public safety officers, they are different from the internal comparables. The testimony and rationale on this proposal was sparse. If the panel is going to look to the external comparables as its supportive rationale on most of the issues, consistency suggests that since there is no such proposal in any of the

external comparables, the county has not sustained its burden on this issue. Although a seemingly well-intended idea, the panel simply does not believe that a program such as this should be imposed upon a bargaining unit through arbitration as opposed to collective bargaining. Unless there is some extraordinary financial concern or a clear demonstration of why the proposal would be more beneficial to the county utilizing the criteria of Section 9, this panel is very reluctant to adopt new language to a contract. There is no compelling reason in utilizing any of the Section 9 criteria as to why this should be added. The only argument that has any validity is the fact that it is part of the internal comparables. However, there is insufficient evidence on this sparse record why the new language should be imposed. Accordingly, the panel would adopt the union's position of status quo.

Dated: 1-19-98

John McGlinchey
John McGlinchey
Delegate for the County
☐ Concur
☒ Dissent

Dated: 1/26/98

Fred LaMaire
Fred LaMaire
Delegate for the Union
☒ Concur
☐ Dissent

Dated: 1/19/98

Kenneth P. Frankland
Kenneth P. Frankland, Chairperson

4. PHYSICAL AGILITY - Article 25

The county proposes the following new section:

Section 15. Physical Agility. All employees shall be required to pass a physical agility test each year. Failure to pass shall require the employee to retake the test within thirty (30) days. Failure to pass the test on a second attempt shall result in a suspension without pay until such time as the employee shall pass the physical agility test. Failure to pass this physical agility test again within six (6) months of failure on the first test shall result in automatic termination of employment unless a workers' compensation or verified medical leave.

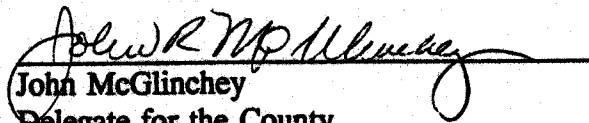
The union proposes no new language.

Discussion

Again, the record on this issue is sparse to say the least. The county simply asserts that since law enforcement officers should be in reasonably good condition, this bargaining unit should be required to pass a physical agility test each year. The suggestion would be tests similar to that given by the Michigan State Police. There is no comparable provision in the external comparables, nor the internal comparables.

The record is insignificant on this issue. Other than the rationale that such an agility program might be in the interests of both parties, in the absence of any compelling rationale identifying deficiency in agility or other physical limitations within the bargaining unit that would support this proposal, the panel cannot support the adoption of this language based upon the record presented. Accordingly, the panel adopts the union's position to maintain the status quo and not adopt the new section.

Dated: 1-19-98


John McGlinchey
Delegate for the County
☐ Concur
☒ Dissent

Dated: 1/26/98

Fred LaMaire
Fred LaMaire
Delegate for the Union

☒ Concur
☐ Dissent

Dated: 4/19/98

Kenneth P. Frankland
Kenneth P. Frankland, Chairperson

5. PENSION PLAN - Article 16, Section 1

The union proposes to add the following to existing Section 1:

Provide MERS B-4 system by increasing the multiplier to 2.5 percent. Employees agree to pay $\frac{1}{2}$ of actuarial costs.

The county's position is to maintain the status quo.

Discussion

The existing contract provides a pension plan in which the employer pays full cost of plan C-2 with Section 55-F waiver with 25 years of service with MERS. Effective January 1, 1992, the employer shall provide MERS B-3 plan. Effective January 1, 1994, the employer shall provide the F-50 with 25 years of service. The union's proposal to increase the plan from B-3 to B-4 means that the multiplier per year would go from the current 2.25 percent to 2.50 percent. There was no actuarial testimony presented by either party, nor testimony by either party relative to what the proposal actually would do to a typical employee and what the cost might be to the system. The union modified its offer by adding a proviso that the employees would pay one-half of actuarial costs. Although the employer makes much of the potential ambiguity in that statement, it is fairly clear from the union's brief that the employees would agree to pay one-half of the benefit as would be determined by an actuary. On an issue as significant as pension, the panel is reluctant to adopt a proposal without knowing its cost impact and to the extent that the county suggests that there is an unknown cost involved, there is much to be said for that statement.

An analysis of the union and employer exhibits on this issue for the comparables shows all have a 2.25 multiplier except two, Barry and Mecosta, with a greater multiplier. Barry

actually has two units, deputies and command, and the deputies' is non-contributory, whereas the command unit has a 5.7 percent contribution. The only comparable that has the identical provision as the union is requesting here is Mecosta. That contract was effective March 3, 1997, but according to county exhibit 7A, footnote 5, the employer is paying the cost of B4 in lieu of wage increases. The Mecosta contract will be contemporaneous with this contract.

The union asserts that its principle rationale is that three of the nine comparables' contracts expire December 31, 1997, Montcalm is currently in negotiations, and Barry, Clare, Clinton and Wexford expire in 1998. They suggest, based upon the status of those contracts, it is reasonable to conclude that the union's proposal relative to participating in paying for the benefit will be comparable with the counties with employee contributions. They also rely on the statement, "It is reasonable to expect that the pension plan system will be increased" during contract negotiations of expiring contracts, and that they will "negotiate" to adopt a 2.5 percent multiplier.

That may be for the future, but unfortunately we must use what is presently before the panel. As was discussed previously in wages, the concept of falling behind or getting ahead in order to be comparable with what the union hopes will be in new contracts in other places is simply not the standard that the panel can rely upon. The standard is that contained in section 9, and essentially comparing the position of this bargaining unit with the comparable communities. Obviously the internal comparables are not in the union's favor, because the internals have the same program as the current contract here. Of the external comparables, only the Barry deputies and Mecosta have the B-4 program. The Barry deputies apparently do not contribute and the county share is only at 6.7 percent versus 12.4 in Wexford. In Mecosta, the

employees do not contribute and the county pays 10.47 percent. A review of the contract (J1(H)) does confirm the employer agreed to pay the cost of the B-4 in lieu of a wage increase. Although the union is willing to pay one-half of whatever the cost might be, they are also asking for a wage increase. On the Mecosta wage scale, according to exhibit 1B, the Newaygo wages, before the 3 percent awarded herein, are slightly higher than Mecosta. With the 3 percent increase, Newaygo wages will be significantly higher during the term of this contract.

The issue here is not the county's ability to pay, but what this benefit means with respect to costs and its relationship to wage increases and the total compensation package of the employees. Given the slight differences in the two comparables that do have the 2.5 percent, the record is not sufficient to support the union's position. If, as the union suggests, when the three contracts expiring in 1997 or the four that expire in 1998 reflect pension increases, then it is conceivable at that time the Section 9 criteria will be more applicable to the proposed increase. Based upon the record before the panel, the county position, namely status quo, seems more consistent with the criteria of Section 9 than the union proposal.

Dated: 1-19-98

John McGlinchey
John McGlinchey
Delegate for the County
☒ Concur
☐ Dissent

Dated: 1/26/98

Fred LaMaire
Fred LaMaire
Delegate for the Union
☐ Concur
☒ Dissent

Dated: 1/19/98

Kenneth P. Frankland
Kenneth P. Frankland, Chairperson

6. HEALTH INSURANCE, RETIREES - Article 17, Section 51(2)

The union proposes to change the retirement contingencies to read:

- (1) Between the ages of 50 to 65 only; and
- (2) The maximum payment obligation of the employer is up to \$100 per month for the premium cost.

The county proposes that the contract remain status quo.

Discussion

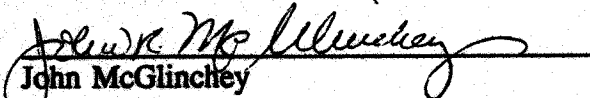
The union's position is that common sense dictates that the employee should be eligible for health insurance benefits at the time of his or her retirement. The current retirement age in Newaygo is 50 years, or 25 years of service; thus, why should the employees wait five years for a health benefit. This certainly has a superficial logic to it and tends to be supported by review of the comparables. In all other comparable communities, the individual apparently is eligible for health insurance the same time he or she is eligible to retire. At age 50 in Barry, Gratiot, and Mecosta Counties, and at 55 in Clare, Clinton, Mason, Oceana and Wexford. Newaygo seems to be an anomaly, where the age of retirement is 50 but the age of eligibility for health insurance is 55.

Relative to employer contributions, four comparables provide an employer contribution, five do not, and Newaygo currently has a \$100 cap. Although the union originally at hearing had proposed \$150, they are now proposing to maintain the same \$100 cap. Of some concern to the panel is the fact that the internal comparables all have age 62 eligibility for retiree health insurance. However, there is already a seven year disparity between this unit and the internal comparables, and based upon the external comparables, there is evidence that retiree health

insurance is compatible with the age of retirement.

Applying the Section 9 criteria, the union's proposal seems to be more in line with the criteria. Accordingly, the panel would adopt the union's proposal.

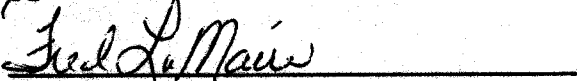
Dated: 1-19-98


John McGlinchey
Delegate for the County

☐ Concur

☒ Dissent

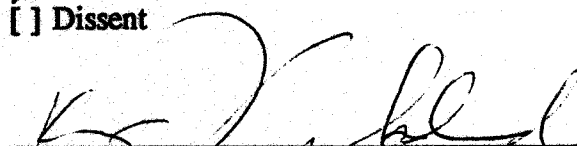
Dated: 1/26/98


Fred LaMaire
Delegate for the Union

☒ Concur

☐ Dissent

Dated: 1/19/98


Kenneth P. Frankland, Chairperson

7. SHIFT PREMIUM - Article 23, Section 14

The union suggests that Article 23, Section 14, be amended as follows:

Shifts designated as 3 p.m. to 11 p.m. shall receive thirty (30) cents per hour, and those employees assigned to the 11 p.m. to 7 a.m. shift shall receive an additional thirty-five (35) cents per hour.

The county ~~proposes~~ maintaining the status quo.

Discussion

At the current time, the 3 to 11 shift receives 20 cents per hour, and the 11 to 7 shift receives 25 cents per hour. Thus, the union proposes a 10 cents per hour increase for each of the shifts.

At the time of the hearing, the union's proposal was for 40 cents and 50 cents respectively for the afternoon and evening shifts. The exhibits reflect that six of the nine comparable communities pay a shift premium and the internal comparables pay the identical 20 cents per hour that the POLC receives. Of those that pay a premium for the 3 to 11 shift, Wexford, Oceana and Mecosta pay five cents more, and Mason pays 5 cents less and Mecosta pays 10 cents less. On the 11 to 7 shift, only Wexford pays more than Newaygo, at 35 cents. Three counties pay the same, and two counties pay a dime less. With respect to the 11 to 7 premium, the county points out that Wexford's 10 cent shift premium pales in comparison to Newaygo's total compensation package, which is significantly better than for the Wexford employees. Although there is some recognition of a slightly higher 3 to 11 p.m. premium in some of the external comparables, this proposal is not bifurcated as is the wage proposal for each year, and accordingly, the panel needs to accept one or the other proposal in toto.

Applying the Section 9 criteria, the panel is satisfied that the county's request for status quo is more consistent as being totally compatible with the internal comparables and on balance more compatible with the external comparables, particularly as it relates to the 11 p.m to 7 a.m. shift. Accordingly, the panel adopts the county proposal for status quo.

Dated: 1-19-98

John McGlinchey
John McGlinchey
Delegate for the County
☒ Concur
☐ Dissent

Dated: 1/26/98

Fred LaMaire
Fred LaMaire
Delegate for the Union
☐ Concur
☒ Dissent

Dated: 1/17/98

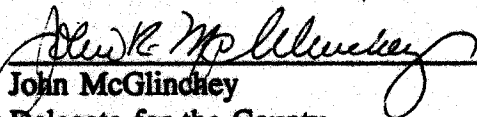
Kenneth P. Frankland
Kenneth P. Frankland, Chairperson

8. HEALTH INSURANCE - Article 17

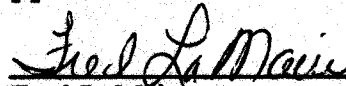
The current contract does not contain a specific provision, but there is a letter of understanding regarding the reimbursement of members who decline employer-provided health insurance.

Both parties have proposed the same offer; namely, that the rate of reimbursement of employees who opt out of the employer-provided health insurance be \$150 per month. A letter of understanding attached to the contract indicates \$75 per month, but the testimony at the hearing suggests that the current practice of the employer by resolution is to allow \$150 per month. Since both parties have agreed on \$150 per month, the panel adopts that proposal, leaving it to the parties whether to amend the existing memorandum of understanding, or incorporate specific language into the contract that reflects the common intent to reimburse employees at the rate of \$150 per month who decline employer-provided health insurance.

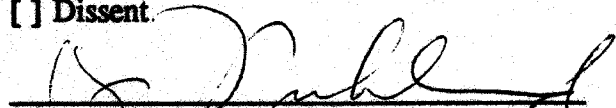
Dated: 1-19-98


John McGlinchey
Delegate for the County
☒ Concur
☐ Dissent

Dated: 1/26/98


Fred LaMaire
Delegate for the Union
☒ Concur
☐ Dissent

Dated: 1/19/98


Kenneth P. Frankland, Chairperson

9/12/97

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

COUNTY OF NEWAYGO and NEWAYGO
COUNTY SHERIFF,

Employer,

Act 312 Arbitration

-and-

MERC Case No. L96 H-6028

POLICE OFFICERS LABOR COUNCIL,

Union

OPINION ON COMPARABILITY

During the pre-hearing conference, the parties agreed to review a prior Act 312 proceeding and attempt to determine whether there were mutually agreeable comparable communities to be used in this proceeding. The parties did agree to a maximum of seven comparables. If the parties were unable to mutually agree upon seven comparables, the parties would offer their list to the panel along with arguments and exhibits, and the panel would then make a decision what would be the seven comparables for purposes of preparing exhibits for the hearing. In the absence of an agreement, the parties have submitted totally distinct lists of suggested comparables.

The Union has suggested Allegan, Clinton, Grand Traverse, Lenawee and Muskegon, and the basis is a study presented to the County Commissioners by the sheriff for purposes of determining the sheriff's compensation. Union Exhibit 1 is the sheriff's wage

Newaygo County

comparison. The sheriff's comparison was based upon primarily two criteria, jail beds and total personnel in the department. Conversely, the County has submitted eight counties, Barry, Clare, Gratiot, Mason, Mecosta, Montcalm, Oceana, and Wexford, being counties stipulated on June 30, 1987, in a prior Act 312 between the county and the FOP. A ninth county, Manistee, which had been included in the prior Act 312, was deleted "in order to reduce the number."

Standard of the Panel's Decision

Section 9(d) of Act 312 states:

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and condition of employment of other employees performing similar services and with other employees generally;
(i) in public employment in comparable communities; (ii) in private employment in comparable communities.

Communities may be comparable or not on many different bases. The panel's task is to select the criteria that are most important or most relevant. Act 312 is more than an exercise in computer analysis and comparability is at best a matter of degree and judgment, not a litanous test for dichotomies. The Act itself does not define comparability. However, experience has given rise to various factors which are often considered. Some of those are type of department, size of department, geographic proximity, population, size of the community in square miles, tax base measured by SEV, among others. The parties have presented information to the panel, and the following table summarizes some of the data submitted by the parties deemed most relevant by the panel.

Community	Population (1992)	SEV	Proximity	Officers Road Patrol	Square Miles	Density
Newaygo	40,756 (C) 38,202 (U)	\$748,929,113		18-20	842.4 (C) 847 (U)	48.4
Barry	51,196	958,417,592	2 South	20	556.2	92.0
Clare	26,384	563,339,227	2 Northeast	19	566.9	46.5
Gratiot	39,450	565,059,865	2 Southeast	26	570.2	69.2
Mason	26,420	853,173,307	Contiguous	13	495.2	53.4
Mecosta	38,553	671,037,738	Contiguous	20	555.8	69.4
Montcalm	55,445	891,138,718	Contiguous	20	708.1	78.3
Oceana	22,954	531,918,227	Contiguous	15	540.5	42.5
Wexford	27,099	530,033,238	2 North	15	565.5	47.9
Lenawee	94,132	1,838,465,888	5 Southeast	25	750.6	125.4
Muskegon	161,980	2,497,060,814	Contiguous	19	509.2	318.1
Grand Traverse	67,290	1,976,325,174	3 North	45	465.1	144.7
Allegan	93,078	2,114,265,257	2 Southwest	55	827.5	112.5
Clinton	59,397	1,122,211,158	2 Southeast	16	571.5	103.9

As stated above, it is not an easy task to select among competing comparables when there are so many statistical variables. First addressing the Union's proposed communities, they have argued that once they found the study the sheriff had presented "a couple of years ago," the Union required no further research. Apparently what's good for the goose is good for the gander, and in lieu of reaching an accommodation with the County as to any common agreed upon counties, they ask the panel to simply adopt counties they argue were previously agreed to by Newaygo County.

This panel cannot accept that proposition, which has some superficial logic but is not necessarily consistent with Section 9 of Act 312. Our task is the comparison of the

employees involved in this arbitration proceeding, with the wages, hours and conditions of employment of other employees performing similar services. As we understand it, this is a deputy sheriff's unit of either 18 or 20 persons, depending upon which information presented by each of the parties is correct. The sheriff is a constitutional officer not covered by Act 312, and thus whatever counties he would propose in a wage comparison study really have no bearing on our decision. Further, the sheriff relied upon two criteria, jail beds and total personnel (he did include population). It is unclear how the counties were selected, as most tables were presented as ranges of multiple counties. Although that may be appropriate for a sheriff's comparison, it is way too limited for our consideration. In order to properly determine the communities that would be more comparable for a collective bargaining unit of deputy sheriffs of approximately 20 people, this panel needs to look at more than just jail beds and total personnel. Although the County proposed additional factors, the table prepared by the panel uses six: population, SEV, proximity, officers, square miles and density. What we are really trying to do is identify counties that have more things in common with Newaygo and to eliminate those counties that appear to have less in common.

The panel has a general impression that Newaygo is a predominantly rural county with no major highways bisecting the county, no major population centers and is located on the west side of the state, one county removed from Lake Michigan. What industry exists centers predominantly in Fremont. Newaygo is not perceived as a tourist destination, and it does not have major roads, like US 31 to the west, US 131 to the east, that produce significant concentration of traffic volume. Newaygo also appears to be slightly unique in that it is substantially larger north to south than any of the neighboring counties, and 842 square miles

is larger than all proposed comparables. All proposed comparable communities are smaller in area.

Given these general observations about Newaygo, the panel believes that the geographical proximity is significant and that along with the other factors, the contiguous counties of Mason, Mecosta, Montcalm and Oceana should be accepted as comparable communities and in addition, Clare, Gratiot, Barry, Wexford and Clinton can also be deemed comparable, notwithstanding they are not contiguous but are in within a two county range, either south, northeast or southeast of Newaygo. They all share the essential component of "ruralism." Clinton, although more urban and closer to the state capitol, still has more ruralism than urbanization and should be included. Although contiguous, Muskegon is excluded for reasons expressed later. Applying the criteria of population, Newaygo has 40,775, Barry has 51,196, Montcalm has 55,445, and Clinton has 59,397, an acceptable upward range, whereas Gratiot has 39,450, Mecosta has 38,553, Wexford has 27,099, Clare has 26,384 and Mason has 26,420, an acceptable downward range. The panel believes that Muskegon simply is much too populous, as is Allegan and Grand Traverse, to be within an acceptable range of Newaygo. Although the parties, at the chair's urging, agreed to seven comparables, the chair now believes that 9 are manageable and the panel would have a difficult task of explaining the exclusion of all but Allegan, Muskegon, Grand Traverse and Lenawee.

If you look at population and divide the square mileage, you come up with density, which is another factor in trying to determine what is the work of the deputy sheriffs, how many miles do they patrol, and how many people are to be served within that square mileage. As said previously, Newaygo has a reasonably low density because it has the largest

square mileage, and its population is exceeded only by three of the comparables. Reasonable measurements of density, that is equating population and square mileage, makes this criteria usable as the selected comparables fall within a range which is not grossly disparate to Newaygo's density. Muskegon's density of 318.1, Grand Traverse's 144.7, Allegan's 112.5 and Lenawee's 125.4 can be used as one of the bases to exclude those communities.

With respect to the number of officers, Newaygo has 18 according to the County and 20 according to the petition filed by the Union. Grand Traverse with 45 officers and Allegan with 55 officers seem to be substantially larger, and that could be a factor in excluding them. Mecosta, Montcalm and Barry at 20 are obviously of the same size. Clinton at 16 is not too small and gives the panel an opportunity to have a road patrol of slightly fewer officers.

It is important to have a measure of the financial resources that are available to the community in order to pay for the services to be provided. That measurement is usually the SEV. At 748,929,113, Newaygo is by no stretch of the imagination a rich county, but it is also not poor in terms of generating resources. The panel has excluded Muskegon at 2,497,060,814 and Allegan at 2,114,265,257 as not being comparable, as it would appear that their ability to raise funds based upon SEV is significantly greater than Newaygo. The same can be said of Grand Traverse at 1,976,325,174 and Lenawee at 1,838,465,888. The selected comparables range above Newaygo up to Clinton at 1,122,211,158 and a low of Oceana of 531,918,227. This does not appear to be a significantly disparate range and can be helpful to get a larger scope of how counties with slightly disparate resources use those resources to support deputy sheriff units.

Sometimes it is easier to explain why communities are not included as opposed

to explaining why others are included. As is seen from the analysis, all but one of the Union's proposed communities has been excluded. The common thread of the exclusion is that they are simply much large in terms of population, SEV and density. In the case of Lenawee, it is on the Ohio border, and although portions of Lenawee county are perceived to be rural, it does have a major US highway, 223, and a community, Adrian, with a post secondary educational institution. It also has the Irish Hills and the Michigan International Speedway, which draw significant tourists and would help to explain why it is not comparable to Newaygo. Although Muskegon is in fact contiguous and thus the proximity would be in its favor, there is a large urban complex that contributes to its population and density disproportionality. Although it can be said that the city of Muskegon can provide the law enforcement functions within the corporate limit, the road patrol mileage suggests that it is significantly smaller than Newaygo. Also, US 31 is a major artery for tourists along the western shore of Lake Michigan, thus creating more traffic flow which is not found in Newaygo County.

Of the proposed Union communities, Clinton can be considered for the above stated reasons to be comparable. Much of Clinton County is rural, as is Newaygo, with a slightly larger population base, predicated upon its proximity to the state capitol. Its slightly higher SEV is also predicated upon the proximity of its southern boundaries, as an overflow from Ingham County. However, its number of officers and square mileage to be patrolled provide a sense of balance to the process. This is not a perfect science and to include Clinton, even though it is two-plus counties away, is not inordinate when we have also included Barry, Clare, Gratiot and Wexford Counties, also two full counties distant from Newaygo.

The panel believes that on balance, the counties selected, Mason, Oceana, Clare,

Mecosta, Montcalm, Gratiot, Clinton, Wexford and Barry more closely meet the Section 9 standards and for the reasons set forth above, should be included as communities that are comparable to Newaygo for purposes of preparing exhibits for the hearing.

Dated: 9/12/97

Kenneth P. Frankland
Kenneth P. Frankland
Chairperson

Dated: 10/6/97

Fred LaMaire
Fred LaMaire
Delegate for the Union

Dated: 10-6-97

☐ Concur
☒ Dissent

John McGlinchey
John McGlinchey
Delegate for the County

☒ Concur
☐ Dissent